

PLANNING COMMISSION MINUTES

May 20, 2008

7:00 P.M.

Present: Chairman Clark Jenkins, Vice Chairman Tom Smith, Dave Badham, Barbara Holt, Ray Keller, City Council Representative Beth Holbrook, City Attorney Russell Mahan, City Engineer Paul Rowland, Planning Director Aric Jensen, and Recording Secretary Connie Feil.

Absent: Michael Allen.

Clark Jenkins welcomed all those present.

Tom Smith made a motion to approve the minutes for May 6, 2008 as amended. Dave Badham seconded the motion and voting was unanimous in favor.

1. Consider conceptual commercial site plan approval located at 210 W. Center, David Cable, applicant.

David and Jason Cable, applicants, were present. Aric Jensen explained that Mr. Cable is requesting conceptual site plan review for a small office/storage building at 220 West Center Street. This property has been zoned C-G General Commercial for many years.

The property is bordered on the north and east by an existing commercial development, and on the west and south by areas of residential multifamily zoning. The property is only 5411 sq. ft in size, and so development options are very limited. The applicant owns a plumbing contracting business and would like to construct a 2300 sq. ft building, of which 300 sq. ft would be finished office space, and the remaining 2000 sq. ft would be for storing his equipment.

Staff has reviewed the proposed plan and found a lot of issues that need to be addressed. First, because the property on the west is residential, the applicant must maintain a side yard setback of 20 feet.

Second, the standard side and rear yard setbacks for the CG zone are 10 feet, however, the Commission has the discretion of reducing those setbacks to 5 feet during the site plan approval.

Third, the applicant is proposing gravel for landscaping, which is not allowed.

Fourth, the property does not drain to the street.

Fifth, the applicant does not show sufficient parking stalls. The 2000 sq. ft of storage requires two stalls, and the 300 sq. ft of office requires 1 stall, for a total of 3 stalls. The applicant has proposed providing one stall within the building, which would then necessitate at least two stalls outside the structure.

Sixth, a solid 6 foot high fence will need to be constructed on the west, adjacent to the residential property, and a dumpster enclosure of similar material is required.

Mr. Jensen mentioned that this is for conceptual review for the proposed plan, and he would like specific comments on the request to have 5 foot setbacks instead of 10 foot setbacks along the north and east side of the property, and general comments on all other aspects of the plan.

Mr. Cable explained that the purpose of the building is to have a small office and garage for his business. He has a small plumbing company and would like to store his truck and excavator inside the garage. He also would like to store his antique cars in the garage. There will be no customers on site, only paper work and phone calls in the office. The proposal will add to the neighborhood with a nice looking building and landscaping in front.

There was a discussion regarding the height of the building, required firewalls, and the apartment building to the west. After the discussion the Commission agreed that if all safety issues are addressed this project is feasible. The Commission directed Mr. Cable to return with a complete site plan showing elevations etc.

2. PUBLIC HEARING - Consider preliminary and final subdivision approval for Christiansen Subdivision located at 264 N. 100 E., Rob & Hillary Christiansen, applicants.

Rob Christiansen, applicant, was present. Paul Rowland explained that this proposed two-lot subdivision is located on the southeast corner of 300 North and 100 East. It contains 22,271 square feet with about 135 ft. of frontage along 300 North and 165 ft. of frontage along 100 East. The property currently has one single-family house and a detached garage located about in the middle of the lot with large gardens on the north and south side of the house. The house and garage are slated for demolition because they straddle the proposed division line.

The proposed subdivision is located in an R-4 area which requires 8,000 square feet per lot with 70 feet of frontage at the required setback on interior lots and 80 ft. of frontage on corner lots. Both of the proposed lots easily meet these requirements with one containing 10,385 s. f. and the other containing 11,886 s. f.

The street improvements, including sidewalk and curb-gutter, are already in place and the utility laterals that are already in place can be reused. One new lot will use the existing sewer and irrigation laterals but will require a new water service, while the other lot will reuse the existing water line and need a new sewer and irrigation lateral. The curb and gutter will be bonded with the two new building permits and will be brought up to standard at that time. Power in the area is served overhead and is available.

The public hearing was opened for all those with comments and concerns.

Jay Benard, residing at 132 E. 300 N., mentioned that the property boundaries in this area are not

accurate. The residents use the fence lines as their property lines. Mr. Benard had some concerns that if the fence lines are changed, he will not be able to get to his back yard.

Mr. Christiansen mentioned that he has no problem with leaving the fence as the property line.

There was a discussion regarding the property lines. It will be required to provide a fence line agreement with Mr. Benard to prevent the creation of a gap between properties.

The public hearing was closed without further comments.

Mr. Rowland recommended that the Planning Commission send a favorable recommendation for preliminary and final subdivision approval of the Christiansen Subdivision (name to be possibly changed) with the following conditions:

1. Complete a fence line agreement with the neighbor to the east to prevent the creation of a gap in the block.
2. Provide a current title report.
3. If necessary, change the name to a unique name not previously used.
4. Correct the indicated redlines on the plat.
5. Pay the following fees:

Storm Water Impact Fee	\$1,073.67
Checking Fee	200.00
Recording Fee	50.00
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	\$1,323.67

Russell Mahan suggested adding an additional condition as follows:

6. Any party listed on the title report as having an ownership interest shall sign the subdivision plat.

Tom Smith made a motion to recommend to the City Council preliminary and final subdivision approval for Christiansen Subdivision located at 264 N. 100 E. subject to the conditions outlined by Staff with the addition of #6. Beth Holbrook seconded the motion and voting was unanimous in favor.

3. PUBLIC HEARING - Continued from April 15, 2008. Consider a variance to allow building on a reduced rear yard setback located at 349 W. 300 N., Mark Minnis, applicant.

Aric Jensen prepared the following Staff report which the Commission had already reviewed.

The applicant, Mr. Mark Minnis, requests a variance from the rear-yard setback requirements of the R-4 zone in order to construct an attached two-car garage. Mr. Minnis currently has a detached two-car garage on the site that he would like to remove and replace with an attached two-car garage.

The home was originally built in 1960 and therefore qualifies for the reduced side yard setback of 5 feet (instead of 8 feet) for homes that do not have attached two car garages. However, the subject property is pie-shaped and so it doesn't get wide enough for a two-car garage until beyond the midpoint of the existing home.

The Planning Commission reviewed this proposal on April 15th and held a lengthy discussion with the applicant and two women representing the property owner on the west. The general consensus was that the applicant's request was out of scale with the neighborhood. The Commission then voted to continue the discussion until this meeting, and instructed Mr. Minnis to bring back another proposal.

Since that time, the applicant has revised his proposal, which includes moving the front of the building back 4 feet and eliminating the full second story but preserving the option of storage in the trusses.

The following is a conforming copy of Utah Code 10-9a-702, which outlines the duties of the appeal authority in relation to variances (underlining added to indicate necessary findings for approval):

10-9a-702. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.

(2) (a) The appeal authority may grant a variance only if:

(i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;

(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) the spirit of the land use ordinance is observed and substantial justice done.

(b) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the land use ordinance would

cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:

- (i) relate to the hardship complained of; and*
- (ii) deprive the property of privileges granted to other properties in the same zone.*

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(4) Variances run with the land.

(5) The appeal authority may not grant a use variance.

(6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:

- (a) mitigate any harmful affects of the variance; or*
- (b) serve the purpose of the standard or requirement that is waived or modified.*

At the April 15th meeting , Staff and the Commission concurred that the petitioner had shown that he meets all of the necessary criteria such that the Commission could grant a variance, however, the request of a large garage with a second level was exorbitant. The desire of additional space for a workshop area and for stairs to go to a second level were completely self imposed hardships. The pie-shape of the lot did necessitate constructing a portion of any two-car garage within a rear-yard setback, however, the proposal of the applicant went above and beyond the concept of a “substantial property right possessed by other property in the same zone.” I.e., an attached two-car garage *with a workshop and a second floor* is not a substantial property right, such as the right to build a home. Now that the applicant has reduced the scale of his proposal, Staff’s opinion is that the request for just an attached two-car garage is within the realm of a substantial property right. Obviously, the Planning Commission does not have to agree with this opinion, however, if the Commission was inclined to grant variance, the following are findings supporting such a decision:

1. Literal enforcement of the ordinance would create an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance, i.e., Due to the pie-shape of this lot, it is not reasonably feasible to construct an attached two-car garage outside of the rear-yard setback without substantial hardship.
2. There are special circumstances that apply to this property that does not apply to all other properties in the neighborhood; specifically, this is a pie-shaped lot.
3. The spirit of the Ordinance is upheld and substantial justice is done by allowing the applicant to construct an attached two-car garage.
4. This is not contrary to the general plan, which calls for single-family development and related accessory structures.

5. In regards to Section 10-9a-707 (2)(b - c), the hardship is located on the property and is the result of circumstances peculiar to the property.

6. A two car garage is an expected and necessary element of a residential structure in our climate, and denying the right to build such would be tantamount to denying the petitioners of a privilege afforded to other property owners in the City.

If the Commission determines that the applicant's proposal does not meet the minimum threshold to grant a variance, the following findings could be made:

1. The applicant already has an existing detached two-car garage, and the desire to have an attached garage is a self-created hardship.

2. The majority of the homes in the immediate vicinity do not have attached two car garages, and therefore the applicant is not being denied a privilege afforded to other properties.

3. The proposed plan would negatively impact the neighboring property to the west in a manner inconsistent with the purposes of the Land Use Ordinance, more specifically, 14-1-102 (3.) "To provide open space for light and air; to prevent overcrowding of the land".

Mark Minnis, applicant, was present. Mr. Minnis presented photos showing his revised proposal with a single story garage and pulling it back 4 feet from the previous proposal. The proposed garage is now 4 feet away from the property line and smaller than first proposed. Mr. Minnis presented 22 signatures from surrounding neighbors in favor of his project.

Clark Jenkins continued the public hearing for all those present with concerns or comments.

Melodee Martinez and Malonee Jensen do not agree with the location of the property line or the location of the present garage. They feel that it is encroaching on their father's property. Ms. Martinez feels that their sidewalk and drive approach should be replaced when Mr. Minnis replaces his. They feel that the sinking was caused by construction vehicles during his recent remodel.

Lorinda LeFevere, residing at 335 N. 300 W., explained that all the remodeling has enhanced the property and increased the property value of the surrounding homes. Ms. LeFevere does not understand the dispute between the neighbors.

The public hearing was closed without further comments.

There was a discussion between the Commission Members, and all agreed that Mr. Minnis has presented a reasonable proposal. Pulling the garage back and removing the second story has eased the situation and still gives Mr. Minnis his garage.

Beth Holbrook made a motion to approve the variance to allow building an attached garage with a reduced rear yard setback at 349 W. 300 N. based on the findings in the Staff report and with the modification of the garage. Barbara Holt seconded the motion and voting was unanimous in favor.

The findings to the motion are as follows:

1. Literal enforcement of the ordinance would create an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance, i.e., Due to the pie-shape of this lot, it is not reasonably feasible to construct an attached two-car garage outside of the rear-yard setback without substantial hardship.
2. There are special circumstances that apply to this property that do not apply to all other properties in the neighborhood; specifically, this is a pie-shaped lot.
3. The spirit of the Ordinance is upheld and substantial justice is done by allowing the applicant to construct an attached two-car garage.
4. This is not contrary to the general plan, which calls for single-family development and related accessory structures.
5. In regards to Section 10-9a-707 (2)(b - c), the hardship is located on the property and is the result of circumstances peculiar to the property.
6. A two car garage is an expected and necessary element of a residential structure in our climate, and denying the right to build such would be tantamount to denying the petitioners of a privilege afforded to other property owners in the City.

4. PUBLIC HEARING - Continued from May 6, 2008. Consider Title 14 Land Use Ordinance text amendments.

Aric Jensen explained that for the last several months the Planning Department has been working on some proposed changes to Title 14, the *Bountiful City Land Use Ordinance*. In addition to the changes proposed by Staff, the owner of Specialties Automotive has made a request for the Commission to consider some changes that he made regarding pole signs and electronic message centers.

Mr. Jensen explained that Staff is still not an advocate for electronic message centers, especially after viewing the one at the marine store adjacent to I-15. However, a maximum of 50 feet height is probably reasonable given the elevation of the freeway in this area. The proposal also included a general increase for electronic message centers from 20 sq. ft to 32 sq. ft throughout the C-H zone. Staff does not endorse that recommendation.

Mr. Jensen reviewed all the proposed changes recommended by Staff. Mr. Jensen noted that there are three proposed revisions left out of last meeting's packet, which are: clarifications to

the size of real estate signs, revisions to the election sign regulations, and definitions for the different types of senior housing.

Last Fall during the elections, the City Recorder and Mr. Jensen discussed ways to better regulate election signs without impinging on free speech. Russell Mahan, City Attorney, read the proposed language.

The definition for different types of senior housing are based substantially on information from Elder Living Source, a national company that brokers/markets senior housing facilities, and from “A Planners Dictionary (2004)”, which is a resource manual published by the American Planning Association.

Mr. Jensen conducted some additional research into power generators, and according to *A Planners Dictionary*, the current terms are “power plant” and “private power plant”, and so he made those changes. The term “passive solar array” is now “passive solar energy system”, which is essentially any solar collection system that does not require external mechanical power. A stationary photovoltaic cell is a type of passive solar energy system.

Mr. Jensen discussed the locations and zoning for assisted living facilities, and asked for a recommendation from the Commission. After some discussion the Commission recommended that they be allowed in C-G General Commercial and P-O Professional Office Zone.

Jared Thompson, owner of Specialties Automotive, was present. Mr. Thompson explained that he is asking for a classy looking sign to direct customers to his business. He would like to be able to compete with the other dealers and make his business profitable. He wants to remain in Bountiful, not only to benefit his own business, but Bountiful too. The surrounding neighbors agree with having a larger sign and they are happy for the upgrades he has made to the property.

There was a lengthy discussion regarding the proposal to change the pole sign requirements for the Heavy Commercial (C-H) zone. The proposed language would allow for taller pole signs with larger electronic message centers on properties along the I-15 corridor. The proposal would currently benefit only three properties: Specialties Automotive, Timberline Cabinets, and the 5th Amendment. The proposed language contained some controversial provisions that resulted in different opinions between the Commission Members.

Barbara Holt made a motion to recommend to the City Council approval of the changes to the Sign Ordinance and to Title 14 Land Use Ordinance as presented and discussed. Ray Keller seconded the motion and voting passed by majority vote. Barbara Holt, Ray Keller, Clark Jenkins, Dave Badham voting “aye” and Beth Holbrook and Tom Smith voting “nay”.

Meeting adjourned at 8:50 p.m.